UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

COMAU, INC,

Respondent,

and

Case Nos. 7-CA-52106 and
7-RD-3644

AUTOMATED SYSTEMS WORKERS LOCAL
1123, a Division of MICHIGAN REGIONAL COUNCIL
OF CARPENTERS, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA

Charging Party/Incumbent Union,

and

WILLIE RUSHING, an individual,

Petitioner,

and

COMAU EMPLOYEES ASSOCIATION (CEA)

Intervenor.
_____/

CHARGING PARTY'S STATEMENT IN OPPOSITION TO EMPLOYER, INTERVENOR, AND PETITIONER REQUESTS FOR REVIEW

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Dated: January 4, 2011

Employer, Intervenor, and Petitioner have filed requests for review of the Regional Director's December 14, 2010 Decision and Order dismissing the petition in this matter. Charging Party attaches and incorporates in this statement a copy of its Brief to the Regional Director (Exhibit A), which summarizes the factual record and legal argument of the Charging Party regarding the nexus between the unfair labor practices and the employee disaffection which led to the filing of the decertification petition.

Intervenor argues in its request for review that the only record before the Board pertains to the transcript in 7-RD-3644, but this runs contrary to Administrative Law Judge Paul Bogas' administration of the joint proceedings (Tr. 513), in which he noted that there would be "one record so you don't have to reestablish things that have already been established," and the "Regional Director gets the entire record and transcript." (Tr. 528). Intervenor's position would unnecessarily require relitigating the entire unfair labor practice case within the "RD" portion of the hearing.

As noted in Charging Party's Brief to the Regional Director, although ALJ Bogas ruled that the new health care plan was effective on March 1, 2010, he also found that any prior impasse regarding health care ceased to exist as of January 7, 2009, when the Employer made a written proposal that increased the contribution the Company was offering to make to provide coverage under the Michigan Regional Council of Carpenters ("MRCC") health care plan (ALJ decision, p. 14)[1]. This is important because the requests for review of the Regional Director's decision might lead one to believe that the unfair labor practice was a singular event that occurred in a vacuum. On the contrary, Employer bargained with ASW over the MRCC health care plan after announcing its last best offer ("LBO"). ALJ Bogas made clear that when impasse is broken, the Employer "must

1 ALJ Bogas also noted that he need not decide whether impasse regarding health care existed as of December 22, 2008, when Respondent implemented a last best offer, "since even if there had been an impasse at that time, I

refrain from taking further action to implement a plan under such circumstances" (ALJ decision, p. 15). Although Charging Party matched the Employer's per member contribution to the MRCC plan, Employer still chose to implement the LBO health care package. The bargaining unit members were well aware of the LBO health care plan due to the Employer's December 2008 notices, as well as efforts in early 2009 to enroll members in the new plan. Membership initiated decertification efforts on the heels of the Employer's announcement and rollout of its LBO plan, and filed the petition approximately six weeks after the effective date of the LBO plan. Clearly, the LBO health care package triggered the employee discontent that resulted in decertification efforts.

Unilateral changes in employees' health insurance, including the introduction of premium payments in the absence of bona fide impasse, are serious unfair labor practices that undermine a union's perceived authority as the bargaining representative of the employees and interfere with the employees' free choice. The record contains ample evidence of member discontent over this issue which is so important to the bargaining unit. As such, the Charging Party respectfully requests that the Board uphold the dismissal of the petition in this matter.

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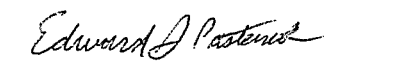
find, for the reasons discussed below, that there was no legally cognizable impasse on March 1, 2009 – the date when the Respondent unilaterally implemented its healthcare plan." (ALJ decision, p. 13, n. 19).

Respectfully submitted,



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Certificate of Service

I certify that on January 4, 2010, I caused to be served a copy of the following: **Charging Party's Statement In Opposition to Requests for Review** and this **Proof of Service** upon the following:

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Exhibit A

UNITED STATES OF AMERICA
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AUTOMATED SYSTEMS WORKERS LOCAL
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CHARGING PARTY'S BRIEF TO REGIONAL DIRECTOR

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Dated: November 24, 2010

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Introduction

From November 17 through November 19, 2009, Administrative Law Judge Paul Bogas conducted a joint hearing in case numbers 7-CA-52106 and 7-RD-3644. On May 20, 2010, ALJ Bogas issued a decision in Case No. 7-CA-52106 regarding Section 8(a)(5) and (1) charges that Respondent Comau, Inc. made unilateral changes to health care benefits provided to employees of the bargaining unit represented by Automated Systems Workers Local 1123 without the Union's consent and without bargaining to good faith impasse; failed to cloak representatives with authority to make proposals or enter agreements; submitted written agreements without attempting to gain authority to do so; and introduced a new demand that the ASW absorb the Respondent's liability for accrued health insurance trailing costs. ALJ Bogas found that Respondent violated 8(a)(5) and (1) by changing employees' benefits without the Union's consent and in the absence of bona fide impasse. (ALJD 17) [1]

While ALJ Bogas indicated that the Respondent did not implement its new health care plan until March 1, 2009, he found that any prior impasse regarding health care ceased to exist as of January 7, 2009, when the Respondent made a written proposal that increased the contribution the Company was offering to make to provide coverage under the Millwrights health care plan affiliated with the Michigan Regional Council of Carpenters (MRCC). (ALJD 14)[2] ALJ Bogas also found that Respondent bargained regressively in introducing a trailing cost demand on March 20, 2009, but ruled that Respondent did not introduce a demand to pay health care trailing costs for the purpose of

1 References to "ALJD" are to the Administrative Law Judge's Decision; references to "Tr.__" are to the transcript; references to "ALJX" are to the Administrative Law Judge's Exhibits; references to "RX" are to the Respondent's Exhibits; references to "GCX" are to the General Counsel's Exhibits; references to "ALJX" are to the Administrative Law Judge's Exhibits.

2 ALJ Bogas also noted that he need not decide whether impasse regarding health care existed as of December 22, 2008, when Respondent implemented a last best offer..."since even if there had been an impasse at that time, I find, for the reasons discussed below, there was no legally cognizable impasse on March 1, 2009 – the date when the Respondent unilaterally implemented its healthcare plan." (ALJD 13, n.19)

creating an impediment to agreement. As such, he recommended dismissal of that charge. He also did not find violations of 8(a)(5) and (1) regarding allegations that Respondent failed to cloak representatives with authority to make proposals and enter agreements, and by submitting written proposals without attempting to gain authority to do so.

On November 5, 2010, the Board adopted the recommended Order of ALJ Bogas. ***Comau Inc.***, 356 NLRB 21 (2010). More specifically, the Board adopted the findings that the Respondent violated 8(a)(5) and (1) by unilaterally implementing the new health insurance plan in the absence of bona fide impasse and that Respondent did not violate 8(a)(5) and (1) by failing to cloak representatives with authority to make proposals and enter into binding agreements, or by submitting written proposals to the Union without gaining authority to do so. The Board found it unnecessary to pass on the ALJ's finding that Respondent did not violate 8(a)(5) and (1) by introducing a regressive demand regarding trailing costs, as any such finding would be "cumulative and would not materially affect the remedy." The Board modified the ALJ's remedy to (a) require backpay and other awards to be paid with interest compounded on a daily basis and (b) provide for electronic notice of the charges.

The Regional Director has requested that the parties brief the issue of whether the conduct found to be a violation of 8(a)(1) and (5) bore a causal connection to employee disaffection as reflected in the filing of the decertification petition in 7-RD-3644.

Factual Background

The 2005-2008 collective bargaining agreement between Charging Party Automated Systems Workers 1123 and Respondent Comau Inc. expired on March 2, 2008. (GCX 2) In March 2007,

ASW 1123 merged with the Michigan Regional Council of Carpenters.[3] (Tr. 42) ASW and Respondent signed an indefinite extension, terminable on 14 days notice by either party. (RX2) ASW and Respondent negotiated throughout 2008. Wisne Automation Employees Association was a party to the 2005-2008 ASW/Respondent agreement, and began negotiating for a new joint agreement with ASW, but left in August or September of 2008 to pursue negotiations on its own with Respondent. (Tr. 49-50)

Health care costs were a major issue throughout negotiations. (Tr. 47, 309, 322) In late August 2008, the parties began to explore the option of having respondent make payments to a Millwrights/Michigan Regional Council of Carpenters (MRCC) plan instead of funding its own self-insured plan. (Tr. 99) The MRCC plan would not contain an employee premium or young adult rider. (Tr. 53-54, 270-71). Respondent's proposed plan required these employee contributions. (RX 3)

At a bargaining meeting on December 3, 2008, Respondent declared impasse and provided ASW a notice of cancellation to the contract extension, which notice terminated the collective bargaining agreement on December 22, 2008. (RX 5). At that time, Respondent also provided notices to employees and to ASW of imposition of a last best offer ("LBO") to take effect on December 22, 2008. (RX 6 through 7) The LBO is contained in the record at GCX 4 and RX 8. The health care changes in the LBO were scheduled to take effect on March 1, 2009. (RX 6-1) The health care package contained in the LBO included variable costs for employee premiums and approximately $200 per month for young adult riders. (Tr. 52, 375, GCX 4) The 2005-2008 agreement contained no such premiums. (Tr. 52, GCX 2)

At a December 3 negotiation meeting, the parties set up a health care committee to discuss

3 At the time of this writing, ASW 1123 is affiliated with the Carpenters Industrial Council.

the MRCC health care plan. (Tr. 53-56, RX 16)

After the announcement of the LBO, Respondent and Blue Cross worked with the members to coordinate enrollment and educate them about the health care plan to take effect on March 1, 2009. (Tr. 154, 424-425, RX 10-3 through 10-50.)

ALJ Bogas found that beginning on December 8 and continuing through March 2009, the parties met approximately 10 times for negotiations regarding health care insurance. (ALJD 6, RX16) The cost to Respondent under the expired plan was approximately $1,200 per member. (Tr. 241, GCX 17) The ASW's first proposal under its plan provided for Respondent to pay $1,000 per member. (GCX 7) Respondent's December 8 proposal provided a three-tier (individual, 2-person, family) contribution to the MRCC plan that would cost approximately $766 per month per member. (Tr. 241, GCX 6). Fred Begle, Respondent's Director of Labor Relations, followed up with a list of questions regarding the logistics of switching to the MRCC plan. (GCX 8). The parties' proposals at the health care committee meetings moved closer together with respect to the Respondent's contribution to the MRCC plan. (ALJD 7, 14, GCX 11, 16-17, 20, 23, 26)

At a full bargaining committee meeting on February 20, ASW presented a contract proposal with a health care package that it believed matched Respondent's February 5 offer of a monthly contribution of $835 to the Millwrights plan. (Tr. 69, GCX 29) The Respondent maintained that the Union's February 20 proposal had an expiration date. ALJ Bogas found that this was not supported by the record. (ALJD 8, n. 14) ASW negotiators testified that at this point in time, they were in a hurry to settle the contract before the new health plan took effect and they relayed this message to Respondent. (Tr. 69-70, 262-63) The parties' next meeting on March 20, which included the full bargaining committees, ended shortly after Respondent asked how ASW would pay for trailing costs -- the costs of health care insurance that the Company provided under the last bargaining agreement.

(Tr. 79, 262)

Respondent maintained that it did not agree to the Union's offer for various reasons. Respondent took the position that it was not responsible for the trailing costs and that differences remained with respect to hold harmless language, starting date/length of contract, and an inflation factor. (Tr. 348, 450-51) Respondent also indicated that the health care subcommittee was set up merely for exchange of information and that the Respondent's subcommittee members did not have authority to enter into an agreement. (TR 341-42, 418) Finally, Respondent's counsel argued that the health care plan was implemented on December 22, 2008, and that dismissal of prior charges precluded issuance of a complaint in this matter. ALJ Bogas ruled that Respondent violated 8(a)(5) and (1) by changing employees' benefits without the Union's consent and in the absence of bona fide impasse. (ALJD 17) That decision was affirmed by the Board on November 5, 2010. The petition for decertification was filed on April 14, 2009.

Law and Argument

In determining whether a causal relationship exists between the unremedied unfair labor practices and the loss of union support, the Board considers the following factors: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the violations, including the possibility of a detrimental or lasting effect on employees; (3) the tendency of the violation to cause employee disaffection from the union; and the (4) the effect of the unlawful conduct on employees' morale, organizing activities, and membership in the union. ***Master Slack Corp.***, 271 NLRB 78, 84 (1984).

A. Length of time between ULP and Decertification.

The employee discontent here came on the heels of Respondent's announcement, rollout and

implementation of its health care plan.[4] On or about December 3, 2008, Respondent provided notices to employees and to ASW of imposition of a last best offer ("LBO") to take effect on December 22, 2008, with health care changes to take effect on March 1, 2009. (RX 6 through 9) In January and February 2009, Respondent and Blue Cross engaged the members to enroll them in and educate them about the new health care plan. (Tr. 154, 424-425, RX 10-3 through 10-50). ALJ Bogas found that none of the actions taken by Respondent prior to March 1, 2009 constituted a point of no return for switching employees to the new health care plan. (ALJD 6) Although the record in this matter is unclear as to exactly when members initiated decertification efforts, Petitioner Willie Rushing pointed to January or February of 2009 when cross-examining ASW committee members about ASW's knowledge regarding decertification. (Tr. 290-291, 518). The petition contains signatures from February 19, 2009 through March 10, 2009, and was filed on April 14, 2009. (ALJX 1)

Dan Molloy, former Vice President of ASW, testified that he received several angry phone calls from members about the new health care package. The discontent reached a crescendo when Respondent deducted premium payments from checks. TR512-513, 517. While Respondent will surely try to make the case that members were unhappy with ASW's dues structure, members had been paying ASW dues since the merger with the Michigan Regional Council of Carpenters in March 2007. (Tr. 42) ASW members were advised about dues increases prior to the merger. (Tr. 562) When asked about his notes from a March 31, 2009 membership meeting which documented

4 Although ALJ Bogas ruled that the new health care plan was effective on March 1, 2010, he also found that any prior impasse regarding health care ceased to exist as of January 7, 2009, when the Respondent made a written proposal that increased the contribution the Company was offering to make to provide coverage under the MRCC health care plan. (ALJD 14) He also noted that he need not decide whether impasse regarding health care existed as of December 22, 2008, when Respondent implemented a last best offer, "since even if there had been an impasse at that time, I find, for the reasons discussed below, that there was no legally cognizable impasse on March 1, 2009 – the date when the Respondent unilaterally implemented its healthcare plan." (ALJD 13, n. 19)

discussions regarding decertification, David Baloga (recording secretary for ASW) testified that "the biggest problem was paying for medical premiums and union dues at the same time." (Tr. 232, R 17) The bottom line is that the health care package was the primary change in working conditions during the time frame of the signing and filing of the decertification petition, and that unilateral change was the impetus for membership's decertification efforts.

B. Nature of the Violations and the Possibility of Effect on Employees.

Unilateral implementation of changes in working conditions has the tendency to undermine employees' confidence in the effectiveness of their selected collective-bargaining representative. ***Vincent Industrial Plastics***, 328 NLRB 300, 302 (1999). Unilateral changes to wages and benefits are of such a character as to either affect the Union's status, cause employee disaffection or improperly affect the bargaining relationship itself. ***Guerdon Industries, Inc.***, 218 NLRB 658, 661 (1975). Minutes from a special membership meeting on January 22, 2009 underscore the importance of health care matters to the bargaining unit. (RX 17)

It is undisputed that the new health care package applied to the entire bargaining unit. (Tr. 375, RX 6 through 6-2, GCX 4). The LBO health care included employee premiums of at least $35.80 to $80.71 for single persons, $79.86 to $173.58 for 2 person coverage, and $95.82 to $203.36 for families. Young adult riders ranged from $198.67 to $227.69.[5] (GCX 4) The 2005-2008 agreement contained no such premiums. (Tr. 52, 375 GCX 3). These new costs were bound to undermine confidence in ASW and have a detrimental and lasting effect on the unit.

C. Tendency of Violation to Cause Employee Disaffection.

"A tendency" of unfair labor practices to interfere with free exercise of employee rights under the Act casts sufficient doubt on the reliability of a petition. ***United Supermarkets, Inc. v. NLRB***, 862

F.2d 549, 552 (5th Cir. 1989). Unilateral action by an employer "detracts from the legitimacy of the collective bargaining process by impairing the union's ability to function effectively, and by giving the impression to members that a union is powerless."[6] ***Carpenter Sprinkler Corp. v. NLRB***, 605 F.2d 60, 64-65 (2d Cir. 1979). ***Priority One Services, Inc.***, 331 NLRB 1527 (2000) squares with the instant matter. In ***Priority One***, unilateral changes in employees' health care premiums were found to be a serious unfair labor practice that undermines the Union's perceived authority as the bargaining representative of the employees and interferes with the employees' free choice.

D. Effect of Conduct on Employee Morale.

When asked about the effect of the new health care plan on employee morale, former ASW Vice President Dan Molloy testified that people were "p---ed," and that membership bombarded him with calls to voice their anger. (Tr. 512-513, 517) Several of the members who testified at hearing had signed the decertification petition. Health care changes weighed heavily on their minds. Randall Nance signed the petition "because I was not happy with that whole health insurance position, period," and noted that he could not contemplate paying for insurance. This is because even when the company 401(k) contribution had been discontinued in the past, the unit maintained its same insurance. (Tr. 568) Mr. Nance's payment went from "zero to 680 a month" due to the adult young rider, and it was "sucking me dry." (Tr. 568) Lacey Mathis "signed it pretty much out of frustration. So much was going on. It's like after we got the letter about the insurance changes, you know, and it just, the next month or so everything was in effect, and I wasn't happy about it." (Tr. 586) Joseph Yoerg signed the petition to "light a match" under ASW negotiators in order to "try a little harder for

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5 These are 2008 figures, which would surely increase in 2009.

6 Luca Savi, the CEO of Respondent, was called to testify pursuant to a subpoena. ALJ Bogas denied the Respondent's motion to quash, and Respondent did not produce Mr. Savi. (Tr. 4. 12, 618, 620). As such, an adverse inference can be drawn. ***UAW v. NLRB***, 459 F.2d 1329, 1349 (D.C. Cir. 1972).

the insurance."[7] (Tr. 564) Felix Nash stated that he voted for the decertification because "It was going to be an increase in money coming out of my check..." (Tr. 542) Thomas Kalenick testified that he signed the petition in part because "I didn't want this medical stuff coming out of my check." (Tr. 554) Even Philip Scavone, who initially stated that his signing the petition had nothing to do with health care issues, testified to the following on further questioning:

> Well, my preference would be, we had the imposed contract, ***I would prefer they would have negotiated a contract fairly***, and then if the company plan was better, get that; if the millwrights plan was better, get that, whatever was best for the group. (***emphasis supplied***) (Tr. 537)

Clearly, the unilateral implementation of health care had a devastating effect on employee morale and support for the ASW.

Conclusion

Respondent bargained with ASW over the MRCC health care plan after announcing its LBO. Although ASW matched Respondent's per member contribution, Respondent chose to implement the LBO health care package. Bargaining unit members were well aware of the LBO health care plan due to Respondent's December 2008 notices, as well as efforts in early 2009 to enroll members in the new plan. The LBO health care triggered the employee discontent that resulted in decertification efforts. For the foregoing reasons, Charging Party ASW 1123 respectfully requests that the Regional Director recognize the effect of Respondent's 8(a)(5) and (1) violations on decertification efforts and dismiss the petition accordingly.

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7 Yoerg "did not want to sign" the petition, was told that the "petition will never go and be submitted to the NLRB," and that it "was not going anywhere but to Darrell and Pete" of the ASW. (TR 561)

Respectfully submitted,

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